

Nos. 23-1078, 23-1130

IN THE

United States Court of Appeals
FOR THE FOURTH CIRCUIT

B.P.J., by her next friend and mother; HEATHER JACKSON,

Plaintiffs-Appellants,

—v.—

WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON COUNTY BOARD OF
EDUCATION; WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION;
W. CLAYTON BURCH, in his official capacity as State Superintendent;
DORA STUTLER, in her official capacity as Harrison County Superintendent,

Defendants-Appellees,

—and—

THE STATE OF WEST VIRGINIA; LAINEY ARMISTEAD,

Intervenors-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA (CHARLESTON DIVISION)
THE HONORABLE JOSEPH R. GOODWIN, DISTRICT JUDGE
DISTRICT COURT CASE NO. 2:21-CV-00316

**BRIEF OF *AMICI CURIAE* CURRENT AND FORMER PROFESSIONAL,
OLYMPIC AND INTERNATIONAL ATHLETES IN WOMEN'S SPORTS,
THE NATIONAL WOMEN'S SOCCER LEAGUE PLAYERS
ASSOCIATION, THE WOMEN'S SPORTS FOUNDATION, AND ATHLETE
ALLY IN SUPPORT OF PLAINTIFF-APPELLANT AND AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *amici curiae* hereby certify that none of the *amici curiae* have a parent corporation. *Amici curiae* are individual athletes and non-profit advocacy organizations and have no shares or securities that are publicly traded.

IDENTITIES AND INTERESTS OF *AMICI*1

INTRODUCTION12

ARGUMENT14

I. EQUAL OPPORTUNITY TO PARTICIPATE IN SCHOOL SPORTS IS
CRUCIAL FOR ALL ATHLETES.....14

A. Sport Thrives on Diversity14

B. Through Sport, Athletes Develop a Sense of Belonging, Connectedness,
and Contribution.....17

II. PARTICIPATION IN SCHOOL SPORTS BENEFITS YOUTH IN ALL
AREAS OF LIFE.....19

A. Participation Fosters Academic Achievement and Helps Students
Manager Pressure.21

B. Participation Builds Teamwork, Leadership, and Discipline Skills.22

C. Participation Benefits Social Skills and Emotional Maturity.23

D. Participation in Sport Teaches Young People How to Overcome
Challenges and Provides Pathways to Success Later in Life.....27

III. EXCLUSION FROM SCHOOL SPORTS HARMS THE SOCIAL,
EMOTIONAL AND PHYSICAL WELL-BEING OF YOUNG
ATHLETES.29

A. Discrimination in School Sports Causes Stigma and Harm.....29

B. Exclusion From Participation in Sport Causes Harm to Social,
Emotional and Physical Well-Being of Young Athletes.....31

CONCLUSION32

CERTIFICATE OF COMPLIANCE34

CERTIFICATE OF SERVICE.....35

ADDENDUM36

TABLE OF AUTHORITIES

Page(s)

Cases

<i>B.P.J. v. W. Va. State Bd. of Ed.</i> , No. 2:21-cv-11111, Dkt. No. 201-4 (S.D. W. Va. filed May 26, 2021)	31, 32
---------------------------------------------------------------------------------------------------------------------------	--------

Statutes

West Virginia Code § 18-33-2-25D.....	13
---------------------------------------	----

Rules

Federal Rule of Appellate Procedure 29(a)(2).....	11
---------------------------------------------------	----

Other Authorities

<i>About Athlete Ally</i> , ATHLETE ALLY, https://www.athleteally.org/about/	12
Amber Baird, et al., <i>The Economics of Inclusion: Inclusion in Sports</i>	12
Andrew Soundy, et al., <i>Psychosocial Consequences of Sports Participation for Individuals with Severe Mental Illness: A Metasynthesis Review</i>	18
Angela Lumpkin & Judy Favor, <i>Comparing the Academic Performance of High School Athletes and Non-Athletes in Kansas in 2008-2009</i>	22
Annemarie Dimech & Roland Seiler, <i>Extra-Curricular Sport Participation: A Potential Buffer Against Social Anxiety Symptoms in Primary School Children</i>	32
Carly B. Slutzky and Sandra D. Simpkins, <i>The Link Between Children’s Sport Participation and Self-esteem: Exploring the Mediating Role of Sport Self-Concept</i>	18
Christer Malm, et al., <i>Physical Activity and Sports—Real Health Benefits: A Review with Insight into the Public Health of Sweden</i>	26, 27

E. J. Staurowsky, et al., WOMEN’S SPORTS FOUND., CHASING EQUITY: THE TRIUMPHS, CHALLENGES, & OPPORTUNITIES IN SPORTS FOR GIRLS & WOMEN	19
Erin Boone & Bonnie Leadbeater, <i>Game On: Diminishing Risks for Depressive Symptoms in Early Adolescence Through Positive Involvement in Team Sports</i>	22
Erin Buzuvis, <i>Transgender Student-Athletes and Sex Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics</i>	27
Hans Steiner, et al., <i>Adolescents and Sports: Risk Or Benefit?</i>	26
Joseph Kosciw, et al., <i>The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools</i>	30
Kelly Troutman & Mikaela Dufur, <i>From High School Jocks to College Grads: Assessing the Long-Term Effects of High School Sport Participation on Females’ Educational Attainment</i>	21
Lindsay Taliaferro, et al., <i>High School Youth and Suicide Risk: Exploring Protection Afforded Through Physical Activity and Sport Participation</i>	27
Martin Van Boekel, et al., <i>Effects of Participation in School Sports on Academic and Social Functioning</i>	19
Perri Class, <i>The Impact of Racism on Children’s Health</i> , N.Y. TIMES	30
Reed W. Lawson, <i>Toward a Psychology of Positive Youth Development</i>	17
Rochelle M. Eime, et al., <i>A Systematic Review of the Psych. & Social Benefits of Participation in Sport for Children and Adolescents: Informing Development of a Conceptual Model of Health through Sport</i>	19, 20
Ryan D. Burns, et al., <i>Sports Participation Correlates With Academic Achievement: Results From a Large Adolescent Sample Within the 2017 U.S. National Youth Risk Behavior Survey</i>	21

Sara Pedersen & Edward Seidman, *Team Sports Achievement and Self-Esteem Development Among Urban Adolescent Girls*.....18

Scott L. Zuckerman, et al., *The Behavioral, Psychological, and Social Impacts of Team Sports: a Systematic Review and Meta-Analysis*21

Shoshana K. Goldberg, *Fair Play: The Importance of Sports Participation for Transgender Youth*.....28

Susan Gore, et al., *Sports Involvement as Protection Against Depressed Mood*22

Will A. Jordan, *Black High School Students’ Participation in School-Sponsored Sports Activities: Effects on School Engagement and Achievement* 12

You Can Play, YOUTUBE (Mar. 1, 2017), <https://youtu.be/ZUb7vg0J3pc>.....29

You Can Play, YOUTUBE (Oct. 4, 2016), <https://youtu.be/wNnM3oBP3uM>;29

IDENTITIES AND INTERESTS OF *AMICI*

Amici are 35 current and former individual athletes in international, Olympic, and professional women's sports, and non-profit organizations including the National Women's Soccer League Players Association, the Women's Sports Foundation, and Athlete Ally. *Amici* believe in the importance of equal opportunity to participate in primary, secondary, and collegiate athletic programs.

Amici athletes have participated in sports at every level and represent a broad cross section of sports, ranging from golf to soccer, and tennis to power lifting. They include Olympians and both current and former professional athletes. These athletes have, among other accomplishments, won Olympic medals and served as captains of U.S. women's national teams. Their accolades consist of, among other things, world records, All-American titles, and top national rankings in their sports.

Among the individual *amici* athletes are:¹

- **Megan Rapinoe** is a two-time World Cup Champion and co-captain of the U.S. Women's National Team ("USWNT"). She is a fan favorite and one of the team's most technical players. A vocal leader on and off the pitch, Megan helped lead the USWNT to the 2019

¹ A complete listing of *amici* athletes is provided in the enclosed Addendum. No party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than amici, their members, or their counsel made a monetary contribution to its preparation or submission.

Women's World Cup Championship scoring some of the biggest goals of the tournament. Megan took home the tournament's two top honors – the Golden Boot for top scorer, and the Golden Ball for the best player in the tournament. Megan is an advocate for equality for all and has been able to intersect her passion for humanity and authenticity.

- **Ashlyn Harris** is a former USWNT and Gotham FC goalkeeper and current Global Creative advisor for Gotham FC, made her debut in 2013 with the USWNT. She was a member of the 2005 and 2019 World Cup Champion team, is a two-time CONCACAF Champion, and is a three-time SheBelieves Cup Champion. In 2016, Ashlyn was named NWSL Goalkeeper of the Year after making 62 saves and having 1.33 goals-against-average in 15 games. She was also named to the 2016 NWSL Best XI. Ashlyn is a champion of self-expression and self-love, and, as a result, her fan base is extremely devoted. In 2021, Ashlyn was named the third most marketable athlete in the world. She has always been an advocate for LGBTQ+ rights and women's rights and uses her platform to promote positive change. In 2019, she married former teammate and *amicus* Ali Krieger, making them one of sports' most beloved couples. In

November 2022, Ashlyn hung up her cleats and retired from her professional playing career to join Gotham FC's Front Office.

- **Ali Krieger** is a Women's World Cup champion and one of the best defenders in women's soccer. She is a two-time All-American, having started 87 matches in which she scored 11 goals with 19 assists. After college, she moved to Germany to play with one of the top clubs in the world, FFC Frankfurt. There, she helped lead her team to two German Cup Championships in 2008 and 2011. Ali has found success everywhere she's played, including Fox Soccer's Best Eleven of FIFA Women's World Cup (2011), two-time Algarve Cup Champion (2013, 2015), 2016 Olympian and 2015 and 2019 Women's World Cup Championships. She was also named to the 2016 FIFPro World XI. In August 2020, she joined the Orlando City SC broadcasting team to provide analysis and sideline reporting for the team. She was elected to the U.S. Soccer Athlete Council in 2017 and has been an active member ever since. She currently plays for NWSL's Gotham FC and in 2019, married her USWNT teammate and *amicus* Ashlyn Harris. In March 2022, Ali announced that the 2023 season would be her last although hopes she leaves the game better than she found it.

- **Layshia Clarendon** was selected #9 overall in the 2013 Women's National Basketball Association ("WNBA") Draft. Layshia is currently signed with the Los Angeles Sparks. In their two terms as Women's National Basketball Players' Association ("WNBPA") Vice President, they helped negotiate a groundbreaking CBA Agreement that will serve as a bedrock for women's professional sports leagues moving forward.

In 2018, Layshia captured gold with Team USA in the FIBA World Championships. The previous season, Layshia was named a WNBA All-Star, led the league in total assists, and broke the franchise record for assists in a single season with the Atlanta Dream.

Layshia was Cal's leading scorer, where they led the Golden Bears to the first Final Four in school history. During their senior season, they were an All-Pac-12 first-team selection and the Pac-12 women's basketball Scholar-Athlete of the Year. In 2022, Layshia was inducted into the Pac-12 Hall of Fame.

Layshia is a noted social advocate, speaker, and writer, who is often asked to lend their voice and opinions on various social topics. In 2020, Layshia became the first out trans and nonbinary player in WNBA history. As an anchor athlete for Athletes for Impact, they

have also been published in The Players' Tribune, Mic, Esquire, and ESPN.

- **Meike Babel** is a former professional tennis player from Germany who played on the Women's Tennis Association Tour for ten years. She was a Women's Tennis Assistant Coach at Tulane University and at Vanderbilt University.
- **Phaidra Knight** is a former rugby player who was a member of the U.S. National Team from 1999 to 2017. She participated in the 2002, 2006, and 2010 Women's Rugby World Cup, and won All-World Team honors in the first two World Cups. She was named USA Rugby's Player of the Decade in 2010. On November 10, 2017, she was inducted into the World Rugby Hall of Fame. Phaidra was the 2021 President of the WSF.
- **Angela Hucles Mangano** is a former member of the U.S. Women's National Soccer Team and a two-time Olympic gold medalist (2004, 2008). Hucles is currently the General Manager at Angel City FC in the NWSL and a minority owner. Hucles was also a soccer analyst and sports commentator for various networks and a former President of the Women's Sports Foundation.

- **Brianna Turner** is an American professional basketball player for the Phoenix Mercury and WNBPA Vice President.
- **Natalie Achonwa** is a professional basketball player for the Minnesota Lynx, a member of the Canadian National Team, and WNBPA Treasurer.
- **Pam Boteler** was a top-ranked sprint canoe athlete who, in 2000, became the first woman in the USA to compete in sprint canoe against men at the national championships. She continued to race against the men in 2001, winning Gold in the Men's 4-person canoe. In 2002, influenced by her success on the water and lobbying off the water, USA Canoe/Kayak changed its by-laws to allow women to compete at the National Championships equal to men. For nearly 20 years, Pam also successfully led a global fight for inclusion and gender equality for women in Olympic Canoeing. Women's canoe events made their debut in Tokyo 2020/2021 Olympics.
- **Meghan Duggan** is a retired American ice hockey forward who had a 14-year career with Team USA. She competed in three Olympic Games and captained the team in two of those games. She won two silver medals in 2010 and 2014 and captained the team to the gold medal in 2018. She also represented the USA at eight Women's

World Championships, capturing seven gold medals and one silver medal. Meghan currently works in the National Hockey League with the New Jersey Devils as the Manager of Player Development. She is also a motivational speaker, mentor, advocate, wife, and mom. Meghan is the current President of the WSF.

- **Sophia Herzog-Gibb** is a two-time Paralympian and two-time Paralympian medalist in swimming. She is an eight-time U.S. National team member and a two-time world champion in 2017, as well as a six-time world medalist.
- **Tziarra King** is a professional soccer player who plays as a forward in the NWSL. She was the first women's soccer player from NC State to win the Atlantic Coast Conference's Scholar-Athlete of the Year and has been called in to multiple U.S. Under-23 National Team Camps.
- **Lori Lindsey** is a retired soccer midfielder and former member of the USWNT. She played in the 2011 FIFA Women's World Cup in Germany and was an alternate for the 2012 London Olympics.
- **Esther Ruth Lofgren** is an American rower and an Olympic gold medalist. She won the gold medal in the women's eight at the 2012 Summer Games in London. Lofgren is a graduate of Harvard

College, where she rowed for Radcliffe Crew and was a two-time All-American. She is an eight-time member of the U.S. National Rowing Team and a seven-time World Championship medalist.

- **Joanna Lohman** is a retired professional soccer player and former member of the USWNT.
- **Kaiya McCullough** is a former professional soccer player who previously played as a defender in the German 2 Frauen-Bundesliga and in the NWSL. McCullough was part of the U.S. Under-18, Under-19, and Under-20 national teams.
- **Aimee Mullins** is an actor, model, and public speaker. Aimee is a former track and field athlete who set three world records in the 100-meter, 200-meter and long jump events and competed at the 1996 Paralympics in Atlanta. She was President of WSF from 2007-2009, and Chef de Mission of Team USA for the 2012 Games.
- **Maya Satya Reddy** is a queer South Asian former professional golfer, LGBTQ+ athlete activist, Athlete Ally Ambassador, and founder and executive director of the Queer Asian Social Club. She was a three-time NCAA All-American and gained status on the Symetra Tour before having to take a step back from the sport due to its exclusive culture and the many harmful experiences she

endured, as a result of that culture. Maya focused her pain on fighting for and becoming an advocate for LGBTQ-inclusive policies in sports. She earned a law degree to strengthen her work in inclusive policy formation, advocacy, and litigation to defend trans and queer athletes.

- **Becky Sauerbrunn** is a professional soccer player who plays in the NWSL and the USWNT. Sauerbrunn won gold with the national team at the 2012 London Summer Olympics, the 2015 FIFA Women's World Cup, and the 2019 FIFA Women's World Cup.
- **Naya Tapper** is an American rugby player and a two-time World Championship contestant, 2017, 2018. Tapper competed in her first Olympic games at the 2020 Tokyo Games.
- **Jasmine Thomas** is an American professional basketball player for the Connecticut Sun and WNBPA Player Representative.
- **Gwen Berry** is an American track and field athlete and activist. Berry is a two-time Olympian (2016 & 2020) and holds the world record in the weight throw. She is a three-time national champion in the weight throw at the USA Indoor Track and Field Championships. Berry won gold in the hammer at the 2014 Pan American Sports Festival.

Amici athletes offer invaluable perspectives on core issues in this case: the life-long benefits of equal opportunity and participation in the athletic programs of primary, secondary, and university schools and the benefits of inclusive and welcoming sports environments. Each *amicus* athlete has in common an appreciation for, and an understanding of, the importance of participation in school sports. All *amici* athletes oppose efforts to single out groups of women and girls from women's sports, which harm the entire sports community. This includes categorically barring transgender girls from participating in school sports in a manner consistent with who they are.

The **National Women's Soccer League Players' Association** ("NWSLPA") is the labor union that represents all women's professional soccer players who play in the National Women's Soccer League, the Division 1 professional soccer league in the U.S. It is a 501(c)(5) labor organization. The NWSLPA is proudly affiliated with the AFL-CIO and does not have a parent corporation.

The **Women's Sports Foundation** ("WSF") exists to enable girls and women to reach their fullest potential in athletics and in life. The organization is an ally, an advocate, and a catalyst. Founded by Billie Jean King in 1974, WSF strengthens and expands participation and leadership opportunities through research, advocacy, community programming and a wide variety of collaborative partnerships.

WSF has positively shaped the lives of millions of youth, high school and collegiate student- athletes, elite athletes, and coaches. WSF is building a future where every girl and woman can #KeepPlaying and unlock the lifelong benefits of sport participation. *All girls. All women. All sports.*®

Athlete Ally believes sport will change the world when it welcomes and empowers all people. As a leading national nonprofit working at the intersection of sport and LGBTQI+ equality, Athlete Ally works to end the structural and systemic oppression that isolates, excludes, and endangers LGBTQI+ people in sport. It educates individuals and institutions to understand obstacles to inclusion for LGBTQI+ people and how they can build an inclusive culture within their athletic communities. Athlete Ally works to ensure sport governing bodies, teams and leagues adopt policies that reflect the diversity of their constituents. It also incubates athlete activism to advance LGBTQI+ equality in and through sport.

Amici file this brief pursuant to Federal Rule of Appellate Procedure 29(a)(2).

INTRODUCTION

Sports are “a key part of the social and cultural fabric of human life.”² Embedded in our nation’s shared love of athletics is the fundamental principle that anyone can participate in sports, no matter their race, national origin, religion, sexual orientation, or gender identity. That is because sport is “one of the greatest socialization mechanisms in the world — it communicates values without relying on any one language, and its most successful participants are known and respected globally.”³ As Nelson Mandela once said: “Sport has the power to change the world. It has the power to inspire. Sport has the power to unite people in a way that few things can. Sport speaks to youth in a language they understand. Sport can create hope where once there was only despair. Sport is more powerful than government in breaking down racial barriers and it laughs in the face of all kinds of discrimination.”⁴

As women and LGBTQ+ athletes, and as organizations that support and advocate for women and LGBTQ+ athletes, *amici* submit that all youth deserve an

² Will A. Jordan, *Black High School Students’ Participation in School-Sponsored Sports Activities: Effects on School Engagement and Achievement*, 68 J. NEGRO EDUC. 54, 54 (1999).

³ *About Athlete Ally*, ATHLETE ALLY, <https://www.athleteally.org/about/> (accessed Apr. 1, 2023).

⁴ Amber Baird, et al., *The Economics of Inclusion: Inclusion in Sports*, THE JABIAN J., 2020, at 64, <https://bit.ly/3UmAEMK> (citing, Nelson Mandela, Laureus Lifetime Achievement Award: “Sport Has the Power to Change the World” (Aug. 14, 2018), <https://bit.ly/31zRYIJ>).

equal opportunity to participate in school sports alongside their peers. Such equal opportunity benefits not only the youth seeking to participate in school athletics, but also the entire sports community as well.

Amici represent a wide range of professional athletes. All maintain that participation in athletics was essential to their development as leaders and individuals. Their early experiences in sport helped *amici* to develop key skills that have been instrumental to the successes they have cultivated throughout their lives.

All *amici* believe that every young person should be able to participate fully in sport alongside one's peers and gain the benefits that sports participation brings. This is especially important for transgender and intersex youth. Some *amici* also share the harm they experienced as a result of exclusion from athletic participation because of who they are, and the ways this was detrimental to their emotional and social development as well as their sense of self and physical well-being.

Amici's experiences, including those of *amici* athletes, lead them to oppose laws like West Virginia's H.B. 3293, the "Save Women's Sports Bill" (2021) (codified as West Virginia Code § 18-33-2-25D), because of the negative impact these measures have on all women and girls. Specifically, H.B. 3293 bans all women and girls who are transgender, and many who are intersex, from playing schools sports in West Virginia at any level. H.B. 3293 flies in the face of bedrock principles of equality and diversity in sports. *Amici* therefore dispute the claim made by

proponents of West Virginia’s H.B. 3293 that it will somehow benefit women athletes. *Amici* submit that the contrary is true—H.B. 3293 harms *all* athletes in women’s and girl’s sports through exclusion, discrimination, and denial of the benefits that flow from participation in sport.

ARGUMENT

I. EQUAL OPPORTUNITY TO PARTICIPATE IN SCHOOL SPORTS IS CRUCIAL FOR ALL ATHLETES.

A. Sport Thrives on Diversity

Participation in school sports brings together a diverse community of student athletes, who share a sense of belonging and connectedness that fosters values of inclusion and empathy. Diversity across athletes’ race, LGBTQ+ status, disability, geographical location, and other experiences and identities, enriches the experiences of individual athletes and benefits the entire sports community.

Athletic communities that foster inclusion of young people from different racial backgrounds help athletes embrace racial diversity, and support and uplift their teammates on and off the field. In July 2020, the WNBA and WNBPA jointly announced the 2020 WNBA Season as a “Season of Social Justice.” This was marked by the creation of the Social Justice Council, of which *amicus* Layshia Clarendon is a leading member. The Council’s mission to “be a driving force of necessary and continuing conversations about race, voting rights, LGBTQ+ advocacy, and gun control amongst other important societal issues”⁵ is an example of how diversity

in sport can foster long-term solidarity, coalition building, and meaningful social change.

Sports also benefit from the participation of athletes with disabilities. As *amicus* and Paralympic track athlete Aimee Mullins explains,

I think the greatest adversity that we create for ourselves is this idea of ‘normalcy’ as it applies to human beings. There is no normal. There’s common, there’s typical, but there’s no normal. Whether it’s gender, physical or mental ability, or another categorization used to make assumptions about people, sports help break down barriers that society imposes.

Ms. Mullins’ confidence in sharing her experiences and reframing what is possible for all athletes and people has benefitted sports and athletes around the world. She explains how celebrating diversity in sport increases who can benefit from sport and in turn benefit their communities:

If we can begin to shift away from the mirage of normalcy and instead view deviations from the common through a lens of possibility, we can increase access to sports and all the benefits they provide. So many more potential participants would be invited to engage their rare and valuable abilities, both in sport and in their communities.

Sports also benefit from geographic diversity. Through sports, students can participate with athletes from different parts of their city, different regions in their state, from across the U.S., and from around the world. These opportunities help young people learn how to bridge regional, cultural, and national differences. As *amicus* Meike Babel explains, “Playing sport has allowed me to meet people from

all over the world, from different cultures, different backgrounds and experiences, and that has fostered respect and open-mindedness towards people who may be different from me.” The love of sport is shared around the world, and that connection serves as a foundation for meaningful relationships and building shared understanding outside of athletics.

Sports also provide an opportunity for LGBTQ+ athletes and their peers to foster acceptance for one another through commitment to shared values of participation and inclusion. As explained by *amicus* Lori Lindsey, “I was grateful that when I came out as a lesbian, I didn’t have to step away from the sport I loved. I gained the tremendous gift of being fully myself and showing other LGBTQ+ athletes that there’s a place for them in sports.” Ensuring LGBTQ+ athletes’ equal opportunity to participate in sports as their authentic selves without fear of rejection enriches the experience for all athletes. Championing diversity in sports provides all student athletes with the opportunity to learn and support people who are different from themselves, a value they carry into their adult lives. As Meike Babel shares,

Trans athletes deserve to play just like any other athlete. We all deserve to experience all the benefits of sports. In my mind, any athlete that fights to be themselves on and off the field or court are role models with inner strength and resiliency. As athletes and as human beings, we learn from each other when we are around people who embrace who they are.

Athletes, and athletics more broadly, are benefitted by the diversity that equal participation creates. Sport thrives on the camaraderie that differences in identity, experience, and ability amplify and enrich.

B. Through Sport, Athletes Develop a Sense of Belonging, Connectedness, and Contribution.

Participation in sports provides student athletes with unique opportunities to develop a sense of belonging, connectedness, and contribution. It also “often means exposing student athletes to a supportive environment that enriches both their love for their respective sports as well as their interest in school.”⁵ Through sports, athletes access a natural community of peers who are connected through shared goals and the commitment of time, discipline, and hard work they each have undertaken.⁶ These shared experiences extend beyond the rigors of the gridiron, pool, court, or rink and enrich the lives of the athletes for years beyond their athletic endeavors.

As explained by *amicus* Phaidra Knight, her athletic experiences fostered a sense of belonging that has echoed throughout her life:

Sport is the one thing in my life that has really brought me into a full person; the people I have discovered, the pathways it has allowed me to take, my ability to touch and inspire others whose lives I would never have come across. So, it has been amazing. It has been everything for me.

⁵ Jordan, *supra* note 2, at 68.

⁶ See Reed W. Lawson, *Toward a Psychology of Positive Youth Development*, 55 AM. PSYCH. 170–183 (2000).

A deep sense of connection and belonging is also created through participation in sports because many student athletes learn that they can be themselves.⁷ Many athletes are celebrated and accepted by their peers and teammates for who they are, thereby building confidence and self-esteem.⁸ The sense of belonging fostered through sport helps student athletes learn that they and their teammates are valued for their differences and unique characteristics.

Through the sense of belonging and connection to their teammates that comes from shared goals and purpose, young people also gain a sense of contribution. *Amicus* Meghan Duggan explains how sport allowed her to contribute to something larger than herself: “I have always wanted to change the world through sports. Playing hockey empowered me and gave me an amazing platform to advocate for the issues that matter the most to me, especially gender equality and LGBTQ+ inclusion.” A sense of connection and contribution in sport permeates all areas of life for student athletes both during their school years and beyond.

⁷ Andrew Soundy, et al., *Psychosocial Consequences of Sports Participation for Individuals with Severe Mental Illness: A Metasynthesis Review*, 8 ADVANCES IN PSYCH. 1 (2015), <https://bit.ly/3WLxLH7>.

⁸ See Sara Pedersen & Edward Seidman, *Team Sports Achievement and Self-Esteem Development Among Urban Adolescent Girls*, 28 PSYCH. WOMEN Q. 419 (2004); see also Carly B. Slutzky and Sandra D. Simpkins, *The Link Between Children’s Sport Participation and Self-esteem: Exploring the Mediating Role of Sport Self-Concept*, 10 PSYCH. SPORT AND EXERCISE 381–389 (2009).

II. PARTICIPATION IN SCHOOL SPORTS BENEFITS YOUTH IN ALL AREAS OF LIFE.

Participation in school sports “has an effect on youth and their immediate environment at the school, community and family levels.”⁹ “Although sport participation is directly related to higher grade point averages and test scores, other factors improving girls’ academic self-esteem and student identification are affiliated with participation in sport.”¹⁰ For example, participation in school sports has been shown to result in benefits such as lower social anxiety, lower social isolation, better social self-concept, and improved self-esteem.¹¹ Moreover, “many of the skills developed through participation [in school sports] are scaffolded to promote academic and social success.”¹²

As a respondent to *amicus* WSF’s Female Leaders in Sport Survey stated, “I just think participation in sport does so much for the well-being of girls—it builds their confidence, helps manage stress/mental health, and prepares them to handle failure, knowing that the next day may be when they win. It is great preparation for

⁹ Martin Van Boekel, et al., *Effects of Participation in School Sports on Academic and Social Functioning*, 46 J. APPLIED DEV. PSYCH. 31, 37 (2016).

¹⁰ E. J. Staurowsky, et al., WOMEN’S SPORTS FOUND., CHASING EQUITY: THE TRIUMPHS, CHALLENGES, & OPPORTUNITIES IN SPORTS FOR GIRLS & WOMEN, 28 (2020), <https://bit.ly/3UxRkRK>

¹¹ Rochelle M. Eime, et al., *A Systematic Review of the Psych. & Social Benefits of Participation in Sport for Children and Adolescents: Informing Development of a Conceptual Model of Health through Sport*, 10 INT’L J. BEHAV. NUTRITION PHYS. ACTIVITY 98 (2013); see also Staurowsky, *supra* note 10, at 27.

¹² *Id.* at 32.

a career.”¹³ A research report commissioned by *amicus* WSF summarizes some of these benefits as follows:¹⁴

Benefits of Sport Participation		
Physical Benefits	Social/Emotional Benefits	Academic/Leadership Benefits
<ul style="list-style-type: none"> • Lower risk of obesity • Lower blood pressure • Higher levels of cardiorespiratory fitness • Reduced risk of cardiovascular disease • Reduced risk of breast cancer 	<ul style="list-style-type: none"> • Improved psychological well-being • Greater life satisfaction • Stronger sense of belonging • Improved self-esteem 	<ul style="list-style-type: none"> • Improved academic achievement • Higher high school graduation rates • Higher college attendance and retention • Reduced symptoms of depression, anxiety, and stress • Greater involvement in extracurricular activities • Opportunities for leadership and learning

These benefits of participation in sports continue throughout life.

¹³ Staurowsky, *supra* note 10, at 24.

¹⁴ *Id.* at 7.

A. Participation Fosters Academic Achievement and Helps Students Manager Pressure.

Research shows that participation in school sports has a documented effect on academic achievement.¹⁵ Indeed, participation in school sports “is associated not only with higher grades, better self-concept, and greater academic self-confidence but also with higher academic achievement.”¹⁶ School sports programs often require academic eligibility to participate or center such achievement as an ethic within the team or athletic program. Most athletic programs require student athletes to maintain a minimum grade point average to be eligible to participate in games or meets. But many teams go further, making academic achievement at least as important as athletic achievement. In addition, participation in sports “facilitates the socialization of participants helping them to develop a strong work ethic, persistence, and respect for values essential for academic success.”¹⁷ Thus, students who participate in school

¹⁵ See, e.g., Scott L. Zuckerman, et al., *The Behavioral, Psychological, and Social Impacts of Team Sports: a Systematic Review and Meta-Analysis*, 49 THE PHYS. & SPORTS MED. 246, 253 (2021); Ryan D. Burns, et al., *Sports Participation Correlates With Academic Achievement: Results From a Large Adolescent Sample Within the 2017 U.S. National Youth Risk Behavior Survey*, 127 PERCEPTUAL & MOTOR SKILLS 448-467 (2020); Kelly Troutman & Mikaela Dufur, *From High School Jocks to College Grads: Assessing the Long-Term Effects of High School Sport Participation on Females’ Educational Attainment*, 38 YOUTH & SOC’Y 443 (2007); see also Staurowsky, *supra* note 10, at 28.

¹⁶ Jordan, *supra* note 2, at 68.

¹⁷ Van Boekel, *supra* note 9, at 32.

athletics generally experience better academic achievement and outcomes than those who do not.¹⁸

While athletic participation fosters academic achievement, such participation also helps athletes manage academic and social pressures. Athletic participation eases some of the social pressure to make friends and “fit in” with other youth because athletes enjoy a supportive community of teammates and peers.¹⁹ Participation in athletics also provides a healthy outlet for academic stress, as well as a community of support when youth need it.²⁰ Learning how to manage pressures early in life provides benefits to athletes beyond their time participating in sports.

B. Participation Builds Teamwork, Leadership, and Discipline Skills.

Participation in school sports also enables students to develop skills, including skills related to teamwork, that benefit them throughout life. Students learn how to work as part of a team and that each team member has a distinct and important role to achieve the team’s goals.²¹ They learn to trust one another and to understand the importance of each team member. *Amicus* Lori Lindsey explains that the value of

¹⁸ See Angela Lumpkin & Judy Favor, *Comparing the Academic Performance of High School Athletes and Non-Athletes in Kansas in 2008-2009*, 4 J. SPORT ADMIN. & SUPERVISION 41 (2012).

¹⁹ See Erin Boone & Bonnie Leadbeater, *Game On: Diminishing Risks for Depressive Symptoms in Early Adolescence Through Positive Involvement in Team Sports*, 16 J. RSCH. ADOLESCENCE 79, 79 (2006).

²⁰ See Susan Gore, et al., *Sports Involvement as Protection Against Depressed Mood*, 11 J. RSCH. ADOLESC. 119, 128 (2001).

²¹ Eime, *supra* note 11, at 15, 16.

teamwork to her athletic experience was critical, and she specifically learned “so many incredible lessons from soccer—especially the values of hard work, discipline, and teamwork. These values have carried over into every part of my life, beyond sport.”

Participation in sports provides youth with an opportunity to develop discipline and embrace hard work. Students learn the value of perseverance and drive through countless hours of practice that can lead to team success and personal fulfillment. *Amicus* Meghan Duggan learned about the fulfillment that comes from teamwork, and about the value of working for the common good, which builds life-long skills. She stresses that “every child, regardless of gender identity, should have the chance to access the lifelong skills that sports teach like confidence, perseverance, and leadership.” Teamwork skills are fundamental to success in many facets of life and participation in school sports provides young people with important opportunities to hone and develop these crucial skills.

C. Participation Benefits Social Skills and Emotional Maturity.

Through sports, students develop crucial social skills and emotional maturity. Participation in sports allows students to create and sustain friendships that last a lifetime. Athletes spend considerable time with their teammates, both in practice and games. They navigate intense, pressure-filled experiences that often lead to

meaningful bonding, connection, and close friendship. As *amicus* Phaidra Knight explains,

My rugby teammates are like a family to me. And with that goes, like a family, the bad things: you get sick of each other, you argue, you have fights, but at the end of the day that is your teammate. And like a family member, you always have their back.

Youth who participate in sports also develop emotional maturity. Through sports, student athletes learn self-control and how to regulate their emotions. Students also experience significantly lower levels of emotional problems and less emotional distress because of sports participation. Indeed, a 2018 study showed that “children who participated in organized sport had more emotional intelligence, better emotional abilities at the intrapersonal and interpersonal levels, and better adaptability skills.” Participation in school sports thus supports students’ growth and personal development, which benefits them throughout life.

Students’ access to mentorship and guidance from their coaches and athletic support staff is another significant benefit of participation in school sports. As young athletes in particular, students learn respect for coaching staff and gain mentorship and guidance not just about sport, but about academics and life more broadly. Ms. Knight shared her experience serving as a rugby coach to youth at Riker’s Island, transforming from an athlete who received mentorship, to a mentor herself: “I’d set up certain guidelines: No talking when someone else is talking. ‘You’re going to

respect everyone; you're going to respect me.' I hope to someday be able to show how introducing discipline with love and direction can transform an individual." Other *amici* became coaches after retirement from sport and echoed the value of contributing to young people's development as athletes and people. Amicus Meghan Duggan "now mentor[s] young athletes, inspiring them to find their voices through hockey" thereby continuing the cycle of mentorship that she experienced.

Athletes also learn to communicate with teammates, peers, coaches, and others, building bridges across differences in experience and perspective. Participating in sports can also provide young people with a platform to speak about issues they care about and reach their peers in ways they might not otherwise. *Amicus* Kaiya McCullough uses her platform and communication skills she learned through soccer to speak about issues that matter to her:

Soccer has given me a platform to speak out about what is important to me, including calling out systemic racism and transphobia. Black trans women face some of the highest rates of violence and suicidality in the country, and through soccer I can encourage my fans to be more knowledgeable and empathetic.

Perhaps most significantly, student athletes learn the meaning and value of sportsmanship throughout their sporting experience. They learn how to live the values embedded in sportsmanship: fairness, equity, courage, and fellowship. Many athletes learn that sportsmanship does not extend only to opponents or referees, but to their own teammates. Kaiya McCullough also learned from her teammates'

unique experiences and identities and discovered that her team was stronger because it was diverse. “Every player on a team brings their own unique experience, and that’s what makes a team stronger. I value the friendships I have developed with LGBTQ+ teammates, and I’ve learned from them how to be a better ally.” Athletic participation provides student athletes with many opportunities to learn, develop, and practice their sportsmanship skills that yield life-long benefits.

A. Participation in Sport Benefits Physical and Mental Health

In addition to the many social and psychological benefits that flow from school sport participation, student athletes gain physical and mental health benefits. Generally, students who participate in school sports take fewer risks and have fewer physical and mental health problems than those who do not.²² Students who participate in sports also experience the benefits of physical activity generally.²³ Some of the direct physical benefits include: “positive effects on lipidemia, blood pressure, oxygen consumption, body composition, metabolic syndrome, bone density and depression, increased muscle strength, and reduced damage to the skeleton and muscles.”²⁴ Participation in sport as a young person also fosters continued participation in sport as an adult. This in turn reduces the morbidity and

²² Hans Steiner, et al., *Adolescents and Sports: Risk Or Benefit?*, 39 CLINICAL PEDIATRICS 161, 161–166 (2000).

²³ Christer Malm, et al., *Physical Activity and Sports—Real Health Benefits: A Review with Insight into the Public Health of Sweden*, 7 SPORTS 1, 13-14 (2019).

²⁴ *Id.*

mortality of many diseases that appear later in life and are positively affected by physical activity and exercise.²⁵ Participation in school sports also provides considerable benefit to the mental health of young people including lowering their risk for depressive symptoms.²⁶

Significantly, participation in sport has also been reported to protect against feelings of hopelessness and suicidality.²⁷ For transgender youth, who are at considerably higher risk for “suicide and other life-threatening behaviors,” this is particularly important.²⁸ Researchers emphasize that, “good physical and mental health of children and young people participating in sport requires knowledge and organization based on everyone’s participation,” underscoring the need for equal opportunity for all students.²⁹

D. Participation in Sport Teaches Young People How to Overcome Challenges and Provides Pathways to Success Later in Life.

Athletic participation provides a safe and controlled environment for young people to confront and overcome challenges. The challenges young people confront

²⁵ *Id.*

²⁶ Boone, *supra* note 19, at 79.

²⁷ Lindsay Taliaferro, et al., *High School Youth and Suicide Risk: Exploring Protection Afforded Through Physical Activity and Sport Participation*, 78 J. SCH. HEALTH 545, 545–553 (2008).

²⁸ See, e.g., Erin Buzuvis, *Transgender Student-Athletes and Sex Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics*, 21 SETON HALL J. SPORTS & ENT. LAW 1, 48 (2011).

²⁹ Malm, *supra* note 23, at 13.

in the pool, or on the court, field, or course, are opportunities to develop problem-solving skills. Not only does research show that school sports participation promotes the ability to work and persevere, but it also illustrates how “[f]or those who have experienced adverse childhood events—including poverty, disruption in family structure or family deaths, or learning or behavioral problems—sports participation can be a source of resilience and empowerment, protecting against short- and long-term negative impacts to mental health and well-being.”³⁰

Athletic participation tests student athletes’ resilience and helps them confront and overcome adversity. *Amicus* Aimee Mullins explains:

As a bilateral below-knee amputee, I spent roughly the first two decades of my life competing against ‘normal’ athletes. Indeed, I had never met another amputee athlete until I was 18 years old. I have never felt defined by the term ‘disabled,’ regardless of what labels others may try to attach to me. Sports have provided a safe and inclusive space for me to grow as both an athlete and a person. Participating in sports created an opportunity to embrace adversity, be better because of it, and ultimately help make society better.

Athletic participation also provides pathways to success for student athletes later in life. Along with support in academic achievement, the ability to manage social and academic pressures, and a sense of belonging and connectedness, students are equipped to excel in high stakes and impressive professional roles after their

³⁰ Shoshana K. Goldberg, *Fair Play: The Importance of Sports Participation for Transgender Youth*, CTR. FOR AM. PROGRESS (2021), <https://ampr.gs/3v7v7xG>.

athletic careers have ended. In sum, athletic participation bestows substantial and immediate benefits on young athletes while they are in school and creates a foundation for success thereafter.

III. EXCLUSION FROM SCHOOL SPORTS HARMS THE SOCIAL, EMOTIONAL AND PHYSICAL WELL-BEING OF YOUNG ATHLETES.

A. Discrimination in School Sports Causes Stigma and Harm.

Given the myriad benefits that students who participate in school sports experience, it is not surprising that discriminatory exclusion from sports inflicts significant stigma and long-lasting harm. Not only does such discriminatory exclusion cause deep harm to student athletes on the receiving end of such treatment, but it also causes lasting negative effects on the athlete's teammates, coaches, school community and sports as an entire institution by denying diversity. Excluding any athlete because of who they are or where they come from contravenes the central cultural values of sports in the United States, which champions the ethos that "if you can play, you can play."³¹

Exclusion from school sports because of a student's race, gender, or LGBTQ+ status is deeply harmful and stigmatizing. Even one experience of exclusion could chill student participation thereby potentially depriving that individual of a lifetime

³¹ Yale Athletics, *You Can Play*, YOUTUBE (Oct. 4, 2016), <https://youtu.be/wNnM3oBP3uM>; You Can Play Project, *University of Connecticut – You Can Play*, YOUTUBE (Mar. 1, 2017), <https://youtu.be/ZUb7vg0J3pc>.

of benefits.³² *Amicus* Meghan Duggan explains that she was effectively excluded from ice hockey at the professional level after graduating from college “because women were excluded from resources and discouraged from participating.” Instead of sacrificing on the ice to build a legacy with her teammates, Duggan was fighting for basic equity:

Women’s professional ice hockey continues to struggle because of the lack of resources, visibility, recognition, and support for women in the sport. When I was fighting for equal pay with the U.S. Women’s Hockey Team, I was ready to sacrifice a World Championship to stand up for my teammates and the rights we deserved.

For many athletes, sports are presumed to be a place they can forget about their day-to-day pressures and focus on participating in a community of connected peers. Instead of reaping the full benefits of participation, LGBTQ+ athletes must worry about rejection for being their authentic selves. Fear and anxiety about others’ reactions limits full and meaningful participation and severely diminishes the benefits a young person would otherwise obtain. Painful and stigmatizing experiences of exclusion from school sports only exacerbates the already high rates of discrimination that LGBTQ+ youth face in school environments.³³

³² Perri Class, *The Impact of Racism on Children’s Health*, N.Y. TIMES (Aug. 12, 2019), <https://nyti.ms/3BFdiJ5>.

³³ Joseph Kosciw, et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools*, GLSEN (2019), <https://bit.ly/3UJ3dnh>.

Exclusion and discrimination because of race, gender and/or LGBTQ+ status harms not only the individual athletes but also their teammates, coaches, and the school community more broadly. When any athlete suffers exclusion based on who they are, athletics overall suffers from the loss of fully realized and engaged participation.

B. Exclusion From Participation in Sport Causes Harm to Social, Emotional and Physical Well-Being of Young Athletes.

Athletes who are excluded from participation in sport because of discrimination experience harm to their social, emotional, and physical well-being. Student athletes excluded from participation are cut off from a primary point of community, connection, and belonging within their school. These student athletes are denied the ability to bond with their peers or develop personal and social skills that carry through a lifetime.³⁴ Such exclusion also negatively impacts their emotional well-being. Exclusion from participation and the accompanying sense of belonging deeply harms athletes' sense of self and identity within their team, athletic, and larger school community. Not only do the excluded athletes experience such social and emotional harms, but so do their teammates, who also feel the impact and loss of a valued team members' exclusion from participation.³⁵

³⁴ Expert Decl. of Prof. Mary D. Fry, Ph.D., *B.P.J. v. W. Va. State Bd. of Ed.*, No. 2:21-cv-11111, Dkt. No. 201-4, at ¶ 48 (S.D. W. Va. filed May 26, 2021) ("Fry Decl.").

³⁵ *Id.* at ¶ 47.

Student athletes who are excluded from participation also experience harm to their physical well-being. They are denied the positive health outcomes that result from participating in athletics.³⁶ They do not have the same access to healthy coping mechanisms that can reduce stress, anxiety, and depressive symptoms.³⁷ With no alternative, excluded students may turn to unhealthy measures to deal with feelings of shame and stigma.³⁸ Without encouragement and connection to teammates, athletes who were unable to participate lose motivation and are not as likely to engage in planning for their future.³⁹ Having such negative experiences during a phase of life where habits are developed does long-term harm to student athletes' ability to generate positive associations with physical activity for their future.⁴⁰ Overall, the social, emotional, and physical harms experienced by athletes who are excluded from sport are significant and far reaching.

CONCLUSION

Sport is a critical and beneficial part of the school experience for many students. Athletic participation provides unique opportunities to forge a sense of

³⁶ *Id.*

³⁷ See, e.g., Annemarie Dimech & Roland Seiler, *Extra-Curricular Sport Participation: A Potential Buffer Against Social Anxiety Symptoms in Primary School Children*, 12 PSYCH. SPORT & EXERCISE 347 (2011).

³⁸ See Francisco J. Lopez Villalba, et al., *Relationship Between Sport and Physical Activity and Alcohol Consumption Among Adolescent Students in Murcia (Spain)*, 114 ARCHIVOS ARGENTINOS DE PEDIATRIA 101, 101-106 (2016).

³⁹ Fry Decl., *supra* note 65, at ¶ 45.

⁴⁰ Malm, *supra* note 23, at 13.

belonging, connectedness, and contribution. The benefits of sport, which extend to all aspects of school and throughout life, are diminished when some athletes are excluded because of who they are. *Amici's* experiences in sports and in life are a testament to the value of inclusion in building powerful teams and social, societal, and business institutions.

Dated this 3rd day of April 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies that:

1. This brief complies with the type-volume limitation, as provided in Circuit Rule 29 and Fed. R. App. P. 29(a)(5), because, exclusive of the exempted portions of the brief as provided by Fed. R. App. P. 32(f), the brief contains 7,174 words.

2. This brief complies with the type-face and type-style requirements, as provided in Fed. R. App. P. 32(a) and Circuit Rule 32(b), because the brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14 point Times New Roman font.

3. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated this 3rd day of April 2023.

/s/ Michelle N. Tanney
Michelle N. Tanney

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2023, I electronically filed the foregoing document through the court's electronic filing system, and that it has been served on all counsel of record through the court's electronic filing system.

Dated this 3rd day of April 2023.

/s/ Michelle N. Tanney

Michelle N. Tanney

ADDENDUM

Amici International, Olympic, and Professional Athletes in Women's Sports

<u>Name</u>	<u>Sports(s)</u>	<u>Highest Level</u>
Natalie Achonwa	Basketball	International, Olympic, Professional
Yael Averbuch	Soccer	International, Professional
Meike Babel	Tennis	International, Professional
Gwen Berry	Track and Field	International, Professional
Pam Boteler	Sprint Canoe	International, Olympic, Professional
Layshia Clarendon	Basketball	International, Olympic, Professional
JayCee Cooper	Powerlifting	Professional
Meghan Duggan	Ice Hockey	International, Olympic, Professional
Abby Dunkin	Basketball	International, Paralympic
Ashlyn Harris	Soccer	Olympic, Professional
Sophia Herzog-Gibb	Swimming	International, Olympic, Professional
Veronica Ivy	Cycling	International, Professional
Phaidra Knight	Rugby	International, Olympic, Professional
Ali Krieger	Soccer	Olympic, Professional
Tziarra King	Soccer	International, Professional
Phaidra Knight	Rugby	International, Olympic, Professional
Casey Legler	Swimming	International, Olympic, Professional
Lori Lindsey	Soccer	International, Professional
Esther Lofgren	Rowing	International, Olympic

Joanna Lohman	Soccer	International, Professional
Angela Hucles Mangano	Soccer	International, Olympic Professional
Kaiya McCullough	Soccer	International, Olympic, Professional
Alana McLaughlin	Mixed Martial Arts	Professional
Aimee Mullins	Track & Field	International, Olympic Professional
Digit Murphy	Ice Hockey	International, Professional
Quinn	Soccer	International, Olympic, Professional
Megan Rapinoe	Soccer	International, Olympic, Professional
Maya Satya Reddy	Golf	Professional
Becky Sauerbrunn	Soccer	International, Olympic, Professional
Naya Tapper	Rugby	International, Olympic
Elana Meyers Taylor	Bobsledding	Olympic, Professional
CeCé Telfer	Track & Field	Professional
Jasmine Thomas	Basketball	International, Professional
Brianna Turner	Basketball	Professional
Chelsea Wolfe	BMX Freestyle	International, Olympic, Professional